

Lawyer Representatives in the Ninth Circuit Year in Review Activities and Accomplishments 2009-2010

I. The Ninth Circuit's Lawyer Representatives

Lawyer Representatives, chosen to represent attorneys practicing in each of the Ninth Circuit's fifteen districts in nine western states and two Pacific Island jurisdictions, serve an important role in the administration of justice in the Ninth Circuit. Currently 164 Lawyer Representatives work to foster open communications among judges and attorneys, and provide support and advice in the functioning of the courts. In 2009, the first group of Appellate Attorney Representatives was appointed by the Ninth Circuit Judges and report to the Ninth Circuit Court of Appeals. Bennett Cooper (Arizona) has served as the Chair of the Appellate Attorney Representatives. The 18 Appellate Attorney Representatives and 4 alternates serve 3-year terms, with the first appointees being staggered to serve 1-3 years. District Lawyer Representatives communicate with the Appellate Lawyer Representatives and Alternates about district-related programs and activities. Attorney support and contributions to the administration of justice in the Ninth Circuit have been invaluable and have resulted in positive changes that have improved the functioning of the courts.

II. The Lawyer Representatives Coordinating Committee ("LRCC")

The LRCC functions as a separate committee and is composed of the chairperson or co-chairs of each delegation of Lawyer Representatives from each of the fifteen districts. The LRCC acts as a liaison for the Lawyer Representatives to the Ninth Circuit Judicial Council's Conference Executive Committee.

LRCC members are required to communicate periodically with the Conference of Chief District Judges to "plan and accomplish such activities within the districts as shall be requested by the Executive Committee or as shall be necessary and proper to accomplish the purpose of the conference." *See* Judicial Council Order adopted December 12, 1978, as amended through 1994, paragraph 4.

The LRCC has three officers: Vice Chair, Chair-Elect and Chair. During the past year, Andrew Jacobs (District of Arizona) has served as Vice Chair, Deb Kristensen (District of Idaho) has served as Chair-Elect, and Robbin Itkin (Central District of California) has served as Chair. The three officers are also members of the Conference Executive Committee, where they take an active role in planning the Ninth Circuit conference on behalf of the Lawyer Representatives with the other Executive Committee members.

Members of the LRCC plan educational programs for the annual meetings with the Conference of Chief Bankruptcy Judges and the Conference of Chief District Judges, and in the past few years have presented at least one program to the Executive Board of the United States

Magistrate Judges of the Ninth Circuit. As in past years, the educational programs presented in 2009-2010 were very well received by the Judges:

A. Conference of Chief Bankruptcy Judges/LRCC Meeting

On November 19, 2009, the LRCC presented a very informative half day program comprised of three different educational panels to the Chief Bankruptcy Judges in Santa Barbara, California. LRCC Chair Robbin Itkin spearheaded the educational program committee and Lawyer Representatives Jeffrey Golden (CAC), Jane Pearson (WAW), Radmilla Fulton (CAS), Ross Richardson (Montana), Nicholas Dreher (Hawaii), Madeleine Wanslee (Arizona), Robert Charles (Arizona), Hamid Rafatjoo (CAC), Marc Cohen (CAC), Marc Levinson (CAE), John Murtha (Nevada), Riley Walter (CAE), and Lawrence Peitzman (CAC) served on the planning committee or contributed materials for the program.

The first panel, entitled: "What is Happening in the Courts and Real World After Clear Channel," focused on a controversial Ninth Circuit Bankruptcy Appellate Panel decision pertaining to sales in bankruptcy. Lawyer Representative Marc Cohen (CAC) served as moderator, and a feisty panel discussion took place among panelists Ford Elsaesser, former Lawyer Representative (Idaho), Lori Carver Hershorin, title officer, and Robert K. Rasmussen, Dean USC Law and Carl Mason Franklin Chair in Law.

The second panel, entitled "Trends in Consumer Litigation," focused on relevant consumer issues and was comprised of three parts: "Rescission Under the Federal Truth-in-Lending Act and Qualified Written Requests Under RESPA", featuring panelist Judith Leah Greenfield, attorney; "Introduction to Fair Debt Collection Practices Act (FDCPA), Fair Credit Reporting Act (FCRA) and Related State Statutes," featuring panelist Carleton Burch, attorney; and "Lien Stripping of Home Mortgages in Chapter 13 Cases," featuring panelists Radmilla Fulton (CAS) and Madeleine Wanslee (Arizona).

The third panel, entitled "Financing in Today's Economy," focused on the status of the economy – past, present and future, and how the state of the economy affects bankruptcy cases and the financing of financial restructures. Robbin Itkin, (LRCC Chair), served as moderator of a well-informed panel comprised of Robert Charles (Arizona), Scott Diehl, President, Commercial Finance Division, Wells Fargo, and Michael Murphy, Managing Director, Alix Partners-San Francisco.

B. Conference of Chief District Judges/LRCC Meeting

The LRCC presented two highly engaging 90-minute programs at the Chief District Judges Conference in Tucson, Arizona in February 2010. The LRCC worked closely with Chief Judge Vaughn Walker of the Northern District of California, the presiding Chief District Judge for the conference, to develop programs of interest to the chief district judges from throughout the Ninth Circuit.

The first program was entitled "New Media in and from the Courtroom." The program was introduced by Assistant Circuit Executive of the Ninth Circuit, David Madden. Mr. Madden explained the many efforts underway in the Ninth Circuit and nationally to address the increasing

use of technology in and from the courtroom, including the Circuit's history on the issue of cameras in the courtroom. Mr. Madden then turned the discussion over to a panel of experts to address various issues raised by the increasing use of "new media" in and from courtrooms – particularly in high-profile matters. Media lawyer Tom Burke moderated the panel discussion, and was joined by David Boardman, Executive Editor of the *Seattle Times*, U.S. District Judge Donald Molloy (Montana), Ninth Circuit Judge Sidney Thomas, and Mr. Madden. Chief Judge Kozinski was present for this program, which elicited lively discussion among the audience members. This program was organized by Deb Kristensen, Chair-Elect LRCC (Idaho), Bob Carlson (Montana), Bennett E. Cooper, Chair, Appellate Lawyer Representatives (Arizona), Meryl Maneker (CAS), and Todd True, Ninth Circuit Advisory Board.

The second program was entitled "The Three R Challenge of CJA Panels: Recruitment, Reimbursement and Retention." Ninth Circuit Judge Richard Tallman, who also serves as Chair of the Circuit's CJA Oversight Committee, gave a thoughtful overview of some of the challenges faced by the Circuit in managing its CJA panels and some of the efforts undertaken by the Circuit's CJA Oversight Committee to address them. Dr. Robert Rucker, Assistant Circuit Executive of the Ninth Circuit, assisted Judge Tallman in his presentation. Thereafter, U.S. District Judge Stephen McNamee (Arizona) moderated a panel discussion along with Heather Williams, federal public defender's office (Arizona), Dan Broderick, federal public defender's office (CAE), Randall Schnack, Managing Attorney, U.S. District Court (CAC), and Pete Schweda, CJA panel attorney (WAE). The panelists covered a wide range of topics from the increased use of case budgeting to reimbursement issues and voucher systems being put into place throughout the Circuit. This program was organized by Deb Kristensen, Chair-Elect LRCC (Idaho), Geoff Cheshire (Arizona) and Bill Symmes (WAE).

C. Meeting with Chief Magistrate Judges

Commencing in 2006, the Executive Board of the Magistrate Judges of the Ninth Circuit invited the LRCC to send a representative to its fall meetings on a yearly basis. The designated liaison is the LRCC's Chair-Elect.

On October 9, 2009, Deb Kristensen attended the Magistrate Judges' Executive Board meeting in Coronado, California. Judge Karen Strombom (WAW) is Chair of the Executive Board and Judge Janice Stewart (OR) is Vice Chair. Ms. Kristensen reported on the Lawyer Representatives' history of working with the Magistrate Judges and presented a report on the LRCC's planned activities and conference schedule for 2010. Ms. Kristensen also addressed a few issues of particular importance to lawyers – noting that such issues have previously been raised (*e.g.*, settlement/mediation training for Magistrate Judges) – in an effort to keep the dialogue between the two groups open. The Magistrate Judges were very appreciative of the Lawyer Representatives' willingness to bring issues of concern to their attention.

As was done the previous year, the Magistrate Judges asked the LRCC to present one of the programs from the Chief District Judges meeting at the annual Magistrate Judges meeting in San Francisco in May 2010. This year, the "New Media" program was chosen by the Magistrate Judges. Thus, on May 13, 2010, the "New Media" program was revisited for the Magistrate Judges in San Francisco. Media lawyer Tom Burke once-again moderated the panel discussion, and was joined by Ted Partidge, media blogger for FireDogLake.com, District Judge Marilyn

Huff, chair of the Ninth Circuit Public Information and Community Outreach Committee, and Mr. Madden.

D. Other Activities

1. Planning the Annual Ninth Circuit Judicial Conference

In September, 2009, the LRCC participated in the first planning meeting with the Conference Executive Committee for the 2009 Ninth Circuit Judicial Conference. The LRCC attends the initial meeting of the Conference Executive Committee to provide input and participate in a brainstorming session to develop topics and discuss potential speakers.

The Conference Executive Committee is comprised of the Chief Judge of the Ninth Circuit, three active Ninth Circuit judges, three active district judges, one bankruptcy judge, one magistrate judge and nine lawyer representatives (the three LRCC officers plus six at-large members, although there are currently seven owing to a temporary adjustment of the staggered terms). The following lawyer representatives served on the Conference Executive Committee in 2009-2010: Robbin Itkin (LRCC Chair), Deb Kristensen (LRCC Chair-Elect), Andrew Jacobs (LRCC Vice Chair), Gary Grimmer (HI), Jo Saxe Levy (OR), Lloyd B. Miller (AK), Judith Ramseyer (WAW), then attorney, now U.S. Bankruptcy Judge Margaret Mann (CAS), Leonard Simon (CAS) and Jay Arriola (Guam).

This year the Conference Executive Committee is Chaired by Chief District Judge Irma Gonzales (CAS), and Ninth Circuit Judge N. Randy Smith serves as Program Chair.

2. Welcoming Lunch for New Lawyer Representatives

Each year, LRCC members organize a special welcome lunch for new Lawyer Representatives at the annual Ninth Circuit Judicial Conference to give them a better understanding of their role as lawyer representatives and how the conference functions. This year, Andrew Jacobs (LRCC Vice Chair) organized this meeting with the help of Nancy Koppe (Nevada), Becky Walker (CAC), Geoff Cheshire (Arizona) and Deb Kristensen (LRCC Chair Elect).

3. Business Meeting for Lawyer Representatives

Immediately following the the new Lawyer Representatives orientation meeting at the annual Ninth Circuit Judicial Conference, the LRCC hosts the Lawyer Representatives Business Meeting. At this meeting, Lawyer Representative activities during the past year are reviewed and shared with other members and the resolution process and Breakfast with the Bench programs are described. In addition, elections for the incoming LRCC Vice Chair and At-Large Members of the Conference Executive Committee are conducted. This year, Robbin Itkin (LRCC Chair) organized this meeting with the assistance of Gloria Sturman (Nevada), Jeff Golden (CAC), Bill Symmes (WAE), Ruth Hesse (AK), Doug Gordon (CAE), Melissa Jones (CAE), Deb Kristensen (LRCC Chair Elect) and Andrew Jacobs (LRCC Vice Chair). A panel discussion regarding successfully planned district conferences and events will take place at the business meeting,

moderated by Nicholas Dreher (Hawaii), and featuring panelists Jeff Golden (CAC), Gloria Sturman (Nevada) and Robert Carlson (Montana).

4. Ninth Circuit Rules Committee

A member of the LRCC is an ex-officio member of the Ninth Circuit Rules Committee. This past year Andrew Jacobs (LRCC Vice Chair) has served as the LRCC's liaison to the Ninth Circuit Rules Committee. The Committee met twice in the last year. It recently recommended amending Circuit Rule 46.5 to clarify how an attorney formerly employed by the Court (as a clerk, for example) could permissibly work upon matters that had been before the Court during their employment. The Committee also recently noted approvingly a proposed change to Circuit Rule 36-2 that clarified that publication was appropriate for decisions that effected some change or clarification in a rule of federal law in particular. The Committee also, consistent with the prevalent spirit of public comments, recommended against a requirement to include hyperlinks in briefs, but agreed to continue to study the question over the coming years as technology changes.

5. Ninth Circuit Advisory Board

The LRCC Chair is the liaison to the Ninth Circuit Advisory Board. This past year Robbin Itkin served as the liaison. Todd True (WAW) served as the Advisory Board's liaison to the LRCC.

6. LRCC Website

The LRCC, through its many members and Vice-Chair Andrew Jacobs as a conduit, has supported the hard work of the Ninth Circuit Executive's Office, including in particular Renee Lorda, as the professionals in that office have built and maintained an increasingly valuable web reference for Lawyer Representatives, at <http://www.ce9.uscourts.gov/committees/lrcc/index.html>. The website not only provides helpful guidance about serving as a Lawyer Representative, and rosters of Lawyer Representative groups such as the LRCC and the Appellate Lawyer Representatives, it also sets forth highlights from District Conferences and other meetings organized and attended by Lawyer Representatives, so that others may benefit from them.

7. District Conferences

Each year the Lawyer Representatives, led by their District Chairs and Co-Chairs, plan educational conferences for the judges in their respective districts. Lawyer Representative Chairs and Co-Chairs shared thoughts and ideas regarding potential educational programs on the various LRCC calls that occurred throughout the year. The agendas for these District Conferences can be located on the LRCC Website noted above.